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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 COUNTY OF LOS ANGELES

20 WILLIAM TAYLOR,  
21 Plaintiff,  
22 v.  
23 CITY OF BURBANK and  
DOES 1 through 100, inclusive,  
24 Defendants.  
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Case No. BC 422252  
Assigned to: Hon John L. Segal, Dept. 50

**DEFENDANT CITY OF BURBANK'S  
RESPONSE TO PLAINTIFF'S  
OBJECTIONS TO EVIDENCE IN  
SUPPORT OF MOTION FOR NEW  
TRIAL OR ALTERNATIVE JNOV**

DATE: June 6, 2012  
TIME: 8:30 a.m.  
DEPT: 50  
Trial Date: March 5, 2012  
Action Filed: Sept. 22, 2009

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1                   1.     Response to Objections to all of Paragraph 2

2             In paragraph 2 of her Declaration, Ms. Amberg laid foundation for her later discussion of  
3 the research she undertook to attempt to identify criminal records for Jurors 6 and 7. Here is what  
4 she stated in Paragraph 2: "In my capacity as Head Librarian, I have access to a number of free  
5 and fee-based databases that I access and use to assist the lawyers and paralegals in the Firm. I  
6 have training and experience in the efficient and proper use of web-based search sites and  
7 processes, and I coordinate training by outside vendors for lawyers and paralegals in the Firm."  
8 Plaintiff's objection no. 1 is to the entire paragraph. The objections lack any merit. The  
9 relevance of Ms. Amberg's paragraph 2 is to explain her knowledge of and familiarity with the  
10 websites she later discusses. She testifies that she has personal knowledge of each of the  
11 propositions in that paragraph, so there is adequate foundation, i.e., her job-related use and  
12 knowledge of the websites, for each proposition. She did not assume any facts to be or not be in  
13 evidence, but rather described what she did and why she did it.

14                   2.     Response to Objections to all of Paragraph 3

15             In paragraph 3 of her Declaration, Ms. Amberg states the nature of the research project  
16 she undertook, and explained how she learned what to do. She describes the conversations she  
17 had with trial counsel with Mr. Frank and trial paralegal Mr. Kay concerning the tasks, progress,  
18 direction on areas for permissible online inquiry, and information on each juror and alternate to  
19 explain the sources of information she used for conducting on-line searches. Plaintiff's  
20 objections no. 2-5 cover the entire paragraph, and generally assert a hearsay objection. The  
21 objections lack any merit because as per Ev. Code §§ 1241 and 1250, she is offering the  
22 statements to explain what she did and why she did it, i.e., "to explain, qualify, or make  
23 understandable conduct of the declarant" and to provide her state of mind "to prove or explain  
24 acts or conduct of the declarant," rather than for any hearsay purpose. There is no speculation on  
25 Ms. Amberg's part despite plaintiff's objection no. 3 to lines 12-14; rather, she is merely  
26 reporting what Mr. Frank told her was the source of the Jurors' alphabetic "Case Info" sheet. The  
27 vagueness objection lacks merit or specificity as to what is unclear, and the Best Evidence Rule  
28 objection is silly because there is no original writing issue that is implicated by this paragraph and

1 no genuine dispute exists as to the material terms of the Case Info sheet, as required by Ev. Code  
2 § 1521(1). The writing that is mentioned, the Case Info sheet, is relevant because it contained the  
3 names of the prospective trial jurors, but this was a public record provided to all trial counsel by  
4 the Court's staff at the outset of the trial.

5 3. Response to Objections to Paragraph 4

6 In paragraph 4 of her Declaration, Ms. Amberg states that Mr. Frank asked her to perform  
7 some criminal background searches on the names given by the members of the jury, and that the  
8 outcome of those searches that revealed two who had criminal records that she found in the  
9 publically searchable databases she utilized. Plaintiff's objections no. 6-8 cover the entire  
10 paragraph except for the last sentence, and generally assert foundation and hearsay objections.  
11 The objections lack any merit because she has laid the foundation for her search process and  
12 gives an overview of the outcome of the searches, i.e., she found some criminal records for  
13 persons with the same names as jurors no. 6 and 7. Per Ev. Code §§ 1241 and 1250, she is  
14 offering the statements to explain what she did and why she did it, i.e., "to explain, qualify, or  
15 make understandable conduct of the declarant" and to provide her state of mind "to prove or  
16 explain acts or conduct of the declarant," rather than for any hearsay purpose, leaving it to the  
17 certified court records themselves the proof of details on crimes charged. There is thus no  
18 hearsay purpose and no need for her to have provided the originals or copies of the screens she  
19 was reviewing at each step of the process because they are not being offered for a hearsay  
20 purpose.

21 4. Response to Objections to all of Paragraph 5

22 In paragraph 5 of her Declaration, Ms. Amberg states that she used the name of juror no. 6  
23 to run various Internet searches and what those searches revealed. The substance of what the  
24 searches revealed were a website that appeared to be for a film-making business, and the reason  
25 that was pertinent was that Mr. Frank told her that juror no. 6 stated under oath during voir dire  
26 that he was a documentary film maker [1 RT 25]. Per Ev. Code §§ 1241 and 1250, Ms. Amberg  
27 is offering the statements in paragraph 5 to explain what she did and why she did it, and to prove  
28 or explain her acts and conduct, leaving it to Mr. Frank to testify to his identification of the voice

1 and image of juror No. 6 as the person depicted in the website and leaving it to the trial transcript  
2 for Juror No. 6's statements of his profession. The hearsay objections thus lack merit. Because  
3 Ms. Amberg was describing a process she undertook, she was not offering these proposition for a  
4 hearsay purpose but rather to explain her steps, and then to explain that because of Mr. Frank's  
5 statement to her about identifying juror no. 6, she checked a public database with the Los Angeles  
6 Superior Court for public records, which of course is subject to the Ev. Code § 1280 public  
7 records exception to the hearsay rule. Ms. Amberg identified the website she checked as well.  
8 Plaintiff's objections no. 9-15 cover the entire paragraph 5, and lack merit for the reasons  
9 discussed above. Ms. Amberg's research trail was provided so Plaintiff could confirm the  
10 process, view the same video, hear the same audio, and thus give Plaintiff the opportunity to  
11 challenge Mr. Frank's identification of Juror No. 6. There is no such challenge in some 40 pages  
12 of opposition papers plaintiff filed. The City responds to the objections to Mr. Frank's  
13 Declaration later in this pleading

14 5. Response to Objections to all of Paragraph 6

15 In paragraph 6 of her Declaration, Ms. Amberg states what her search of the Los Angeles  
16 Superior Court's criminal case index for the person with the name of Juror No. 6 revealed, i.e., an  
17 arrest and a case number. These are not offered for the truth of the matter asserted, but rather to  
18 explain why she made a request of the attorney service to obtain a certified copy of Case Number  
19 LAH3HL01041-01 from the Hollywood Division courthouse. See Ev. Code §§ 1241, 1250. Ms.  
20 Amberg also indicated that the date of birth in the criminal Complaint matched the date of birth in  
21 her search of the LASC criminal records database, both of which are within the public records  
22 exception to the hearsay rule, Ev. Code § 1280. The City did not include the date of birth and  
23 juror names in the City's publically filed moving papers to protect juror privacy. However, the  
24 un-redacted versions of the documents were provided to plaintiff's counsel (and will be available  
25 to the Court of course during the hearing if requested). Plaintiff's objections no. 15-20 cover the  
26 entire paragraph 6, and lack merit for the reasons discussed above.

1                   6.     Response to Objections to all of Paragraph 7

2             In paragraph 7 of her Declaration, Ms. Amberg states the foundation for Exhibit 17, i.e.,  
3     that it is a true and correct copy of the certified copy of the criminal case file records she received  
4     via First Legal from the Hollywood Branch of the Los Angeles Superior Court for case no.  
5     LAH3HL01041-01. This is the criminal record for the person with the same name as Juror No. 6,  
6     whom Mr. Frank identified as that trial juror, except that the defense “redacted” his name and  
7     date of birth from the City’s filed moving papers to protect Juror No. 6’s privacy. Plaintiff’s  
8     objections no. 21-22 cover the entire paragraph 7, and generally lack merit as discussed above.  
9     The City concedes there is merit to plaintiff’s hearsay objection to Ms. Amberg’s summary  
10    description of the content of the certified criminal case records, i.e., that Juror No. 6 pled “no  
11    contest” to the failure to disperse charge and that the charge of carrying a concealed weapon,  
12    described as a dirk or dagger, was dismissed. But those facts are revealed in Exhibit 17, the  
13    certified copy of the public record upon which the City relied in its Motion for New Trial.

14                   7.     Response to Objections to all of Paragraph 8

15            In paragraph 8 of her Declaration, Ms. Amberg states she conducted a search for Juror No.  
16    7 on a program available through LexisNexis using just her name and “Los Angeles.” The results  
17    yielded results for several people with the same name. Plaintiff’s objection no. 23 covers the  
18    entire paragraph 8, but there is no hearsay being offered, no lack of foundation mentioned, and  
19    there is no Best Evidence Rule issue. Per Ev. Code §§ 1241 and 1250, she is offering the  
20    statements to explain what she did and why she did it, i.e., Ms. Amberg simply explained her  
21    process and state of mind as to why she needed to take other steps as to Juror No. 7. Juror No. 7’s  
22    name was more common than that of Juror No. 6 and thus required further investigation, all of  
23    which she explained in the following paragraphs.

24                   8.     Response to Objections to all of Paragraph 9

25            In paragraph 9 of her Declaration, Ms. Amberg states she ran a Google search using Juror  
26    No. 7’s name, “chef” (the profession juror no. 7 mentioned in her responses during jury selection  
27    [1 RT 20], and “Los Angeles.” She further described that this search revealed a Twitter.com  
28    account which included a photograph which she showed to Mr. Frank and which Mr. Frank was

1 able to identify as a photo of trial juror no. 7. The crux of this paragraph 9 is an explanation of the  
2 process whereby a web-based photograph of a woman was ultimately identified by Mr. Frank as  
3 being Juror No. 7. The trail was provided so Plaintiff could confirm the process, view the same  
4 photograph, and thus give Plaintiff the opportunity to challenge Mr. Frank's identification.  
5 There is no such challenge in some 40 pages of opposition papers plaintiff filed. Plaintiff's  
6 objections no. 24 – 28 pertain to Amberg Declaration paragraph 9. Per Ev. Code §§ 1241 and  
7 1250, she is offering the statements to explain what she did and why she did it, i.e., Ms. Amberg  
8 simply explained her process and state of mind as to why she ultimately ordered criminal case  
9 files for 3 specific criminal cases identified on the LASC public records database. That database  
10 and its contents are within the public records exception to the hearsay rule, Ev. Code § 1280.

11 9. Response to Objections to all of Paragraph 10

12 In paragraph 10 of her Declaration, Ms. Amberg states she ran additional Internet searches  
13 using information she obtained from previous searches. These descriptions of the steps of the  
14 research process are not hearsay nor are they offered for a hearsay purpose. Plaintiff's objections  
15 no. 29 – 33 pertain to Amberg Declaration paragraph 10. Per Ev. Code §§ 1241 and 1250, Ms.  
16 Amberg's description of her locating and use of the food blog for a person with the same name as  
17 Juror No. 7 is to explain what she did and why she did it, i.e., Ms. Amberg simply explained her  
18 process and state of mind as to why she used that information to attempt to corroborate other  
19 information that could be used for a criminal records search. The outcome of that search was  
20 revealed in the certified criminal court records provided with the moving papers. The certified  
21 criminal proceedings and docket materials are within the public records exception to the hearsay  
22 rule, Ev. Code § 1280. The Best Evidence Rule does not pertain where as here certified public  
23 records are provided by the clerk of the court. To the extent that Ms. Amberg states her  
24 suspicions about the use of numbers in a Twitter account name, she is not offering those hunches  
25 for the truth of the matter asserted but rather to explain her state of mind and reasons for those  
26 steps in her research process.

10. Response to Objections to all of Paragraph 11

In paragraph 11 of her Declaration, Ms. Amberg states what her search of the Los Angeles Superior Court's criminal case index for the person with the name of Juror No. 7 revealed, i.e., three criminal arrest and case number records. These are not offered for the truth of the matter asserted, but rather to explain why she made a request of the attorney service to obtain a certified copy of those three case numbers from the Airport Division courthouse. See Ev. Code §§ 1241 and 1250. Plaintiff's objections no. 34 – 43 pertain to Amberg Declaration paragraph 11. There is merit to plaintiff's hearsay objection to Ms. Amberg's summary description of the content of the certified criminal case records, i.e., that Juror No. 7 has multiple charges for driving without a license. But those facts are revealed in Exhibits 18 and 19, the certified copy of the public docket record for two of the three criminal cases, and in Exhibit A, B, and C being submitted with the City's Reply papers which Ms. Amberg had first requested on April 30, 2012, a month before the records clerk at the Airport courthouse finally provided the certified copies of the three complaints. The City's concurrently filed Notice of Lodging and Declaration of Federico Lozano provide the certified copies of those three Juror No. 7 criminal Complaints.

11. Response to Objections to all of Paragraph 12

In paragraph 12 of her Declaration, Ms. Amberg states she submitted a request to First Legal, a third-party vendor of attorney services, to retrieve a certified copy of the entire file for Case Numbers 9WA14122, 0WA13455, and 1WA12029. She also explained First Legal's response (i.e., that while the records were in storage at the LAX Airport courthouse location, the staff at the courthouse could not guarantee retrieval of the file and readying certified copies of the criminal case files prior to the May 7, 2012 date the motion papers were to be filed). These proposition were not offered for the truth of the matter, but instead per Ev. Code §§ 1241 and 1250 to explain why the dockets were ordered instead of having copies of the criminal Complaints and related publically-available records to file with the Motion itself. Plaintiff's objections no. 44 – 46 pertain to Amberg Declaration paragraph 12. As with the other Best Evidence Rule and speculation objections, they lack merit as this paragraph does not discuss the content of any documents and Ms. Amberg is not guessing as to any purported fact but merely



describing her actions and steps in the research process as to Juror No. 7.

12. Response to Objections to all of Paragraph 13

Plaintiff's objections no. 47-52 pertain to Amberg Declaration paragraph 13. In paragraph 13 of her Declaration, Ms. Amberg states that Exhibit 18 is a true and correct (but slightly redacted) copy of the certified copy of the docket for Los Angeles Superior Court Case no 9WA14122 that she ordered and obtained. That proposition is not hearsay but a matter within her personal knowledge, and the attached certified copies within the public records exception to the hearsay rule, Ev. Code § 1280. The Best Evidence Rule does not pertain where as here certified public records are provided by the clerk of the court. There is merit to plaintiff's hearsay objection to Ms. Amberg's summary description of the content of the certified criminal case records, i.e., that Juror No. 7 had a 2009 Complaint for driving without a license and for marijuana possession. But those facts were revealed in Exhibit 18, the certified copy of the public docket record for criminal Court Case no 9WA14122, which the City submitted as part of its moving papers. As of the time of the City's reply papers, the records clerk has finally provided certified copies of the criminal Complaint itself that Ms. Amberg had requested a month earlier. That Complaint is attached as Exhibit A to the Notice of Lodging being concurrently filed with the reply papers.

13. Response to Objections to all of Paragraph 14

Plaintiff's objections no. 53-58 pertain to Amberg Declaration paragraph 14. In paragraph 14 of her Declaration, Ms. Amberg states that Exhibit 19 is a true and correct (but slightly redacted) copy of the certified copy of the docket for Los Angeles Superior Court Case no. 1WA12029 that she ordered and obtained. That proposition is not hearsay but a matter within her personal knowledge, and the attached certified copies within the public records exception to the hearsay rule, Ev. Code § 1280. The Best Evidence Rule does not pertain where as here certified public records are provided by the clerk of the court. There is merit to plaintiff's hearsay objection to Ms. Amberg's summary description of the content of the certified criminal case records, i.e., that Juror No. 7 had a 2011 Complaint for driving without a license, failed to appear as ordered and had a Bench warrant issued against her. But those facts are revealed in Exhibit 19,

the certified copy of the public docket record for criminal Court Case no 1WA12029, which the City submitted as part of its moving papers. As of the time of the City's reply papers, the records clerk has finally provided certified copies of the criminal Complaint itself that Ms. Amberg had requested a month earlier. That Complaint is attached as Exhibit B to the Notice of Lodging being concurrently filed with the reply papers.

14. Response to Objections to Exhibits to Amberg Declaration.

Plaintiff's objections no. 59-61 pertain to the three exhibits to the Amberg Declaration. All of those exhibits are certified copies of court records subject to the public records exception to the hearsay rule, and as certified copies they are self-authenticating and thus do not lack foundation. The speculation and relevancy objections are baseless; criminal records of jurors who were asked to reveal any negative contents with police departments are obviously relevant to the issue raised by the motion for new trial as to juror misconduct.

**B. Response to the 80 Objections to Ronald Frank Declaration**

Plaintiff objected to 80 different portions of the Declaration of Ronald Frank, trial counsel for the City. There was no objection to the first three paragraphs of Mr. Frank's Declaration. But virtually every other sentence in the remaining 35 paragraphs of the Frank Declaration drew one or multiple objections. The plaintiff's objections<sup>2</sup> should be overruled for the reasons detailed below.

1. Response to Objections to Paragraph 4 of the Frank Declaration.

Plaintiff's objection no. 1 to the Frank Declaration is that the following sentence is irrelevant, hearsay, lacks foundation, and assumes facts: "the fact that a prospective juror had a prior negative contact with a law enforcement official or agency, and the use of force or weapons, were all material to me and my client in assessing potential bias to be ferreted out during *voir dire*." The objections are silly and should be overruled. In Paragraph 4, Mr. Frank provides the

<sup>2</sup> As with the Amberg objections, plaintiff piles on extraneous objections to almost every sentence in the Frank Declaration such as "compound" and "vague and ambiguous," with no explanation as to what is vague or why a sentence in a Declaration (as opposed to a question of a witness) can be objectionably compound. City will not reiterate this point as to each of the 80 objections to the Frank Declaration since it would be the same response each time.

1 overview for the voir dire question at issue in the juror misconduct analysis, i.e., why Mr. Frank  
2 requested that the Court ask prospective jurors about contacts with law enforcement. The quoted  
3 sentence is from Mr. Frank's personal knowledge, explains his state of mind and the reasons for  
4 making the written request for the Court to inquire of prospective jurors on specific topics, and  
5 why those question were material to the City's voir dire strategy. Ev. Code §§ 1241, 1250 are the  
6 pertinent hearsay exceptions if one were needed. Plaintiff's objection no. 2 is to a later sentence  
7 in Paragraph 4, which is "The following topics quoted from that filing were designed to reveal  
8 actual or implied bias against police agencies and officers." The same reasoning applies as stated  
9 for objection no. 1, which were the same objections described above.

10                   2.     Response to Objections to Paragraph 5 of the Frank Declaration.

11             Plaintiff's objections no. 3-5 relate to Frank Declaration paragraph 5. The objections are  
12 relevance, speculation, hearsay, foundation, and assuming facts, and virtually all lack merit. In  
13 Paragraph 5, Mr. Frank explains why he included in the pleading entitled Proposed Voir Dire  
14 Questions the suggestion that the Court give prospective jurors the option of talking about their  
15 negative contacts with the police in private, i.e., to encourage honesty. Mr. Frank is relating his  
16 personal knowledge and reasoning to explain what he did and why he did it, which is not offered  
17 for any hearsay purpose but if it were it would be subject to the state of mind exception of Ev.  
18 Code § 1250. Mr. Frank also provided his personal knowledge of experience with other jurors  
19 concerning their willingness to share their arrest or criminal records with strangers, as further  
20 explanation for the suggestion of the option of a private sidebar, and the fact that one of the  
21 prospective jurors (no. 14) in fact used that option during the voir dire at the instant trial to  
22 address his own personal experience with a law enforcement officer. As to that latter point, the  
23 City concedes that prospective juror no. 14's statements as summarized by Mr. Frank are  
24 technically hearsay, so objection no. 5 on that ground is conceded.

25                   3.     Response to Objections to Paragraph 6 of the Frank Declaration.

26             Plaintiff's objections no. 6-7 relate to Frank Declaration paragraph 6. The objections are  
27 relevance, speculation, hearsay, foundation, assuming facts, and best evidence rule, and virtually  
28 all lack merit. In Paragraph 6, Mr. Frank explains that the Court did not ask about all of the

1 City's requested *voir dire* topics, which is not hearsay and which is based on Mr. Frank's  
2 personal knowledge from the trial. The relevance is that the Court considered the use of force  
3 and law enforcement contact questions to be sufficiently germane and important in the case that it  
4 selected those question from the 20 or so topics the City requested as ones to actually inquire  
5 about. Mr. Frank further explains that the Court did select the negative contact and use of force  
6 topics as ones to inquire of prospective jurors, and then gives the transcript cites that include such  
7 questions and prospective jurors' answers. Mr. Frank further gave the sequence of timing of the  
8 Court's inquiries of prospective jurors about these topics, i.e., prior to attorney *voir dire*, and then  
9 again when replacement prospective jurors were seated following excusals of several jurors for  
10 cause or upon exercises by both sides of peremptory challenges. These statements are also based  
11 on Mr. Frank's personal knowledge from the trial and the conduct of the proceedings, but to the  
12 extent there is any arguable hearsay contained in the summary the transcript of trial day 1 are  
13 identified.

14 4. Response to Objections to Paragraph 7 of the Frank Declaration.

15 Plaintiff's objections no. 8-10 relate to Frank Declaration paragraph 7. The objections are  
16 relevance, speculation, hearsay, foundation, assuming facts, argumentative, and best evidence  
17 rule, and they lack merit. In Paragraph 7, Mr. Frank continues from paragraph 6 in explaining  
18 more of the *voir dire* process that he personally observed, i.e., that some jurors answered the law  
19 enforcement contact question and others did not. Mr. Frank states that neither of the two jurors  
20 who are the subject of the juror misconduct issues raised in the Motion for New Trial responded  
21 to the negative contact question, nor did either avail themselves of the private sidebar option. It is  
22 not hearsay to report that another person failed to speak. The fact that the two focused jurors  
23 failed to disclose anything in response to the law enforcement contact questions is plainly  
24 relevant to the juror misconduct issues raised by the Motion for New Trial, i.e., that two jurors  
25 who turned out to have criminal records failed to reveal them. There is nothing argumentative in  
26 Mr. Frank's statements in Paragraph 7; it is a fact that the City exercised its first peremptory  
27 challenge to excuse a prospective jurors who reported negative experiences with the LAPD, the  
28 same arresting agency reflected in the certified criminal records for both of jurors no. 6 and 7 who

1 failed to disclose their arrests by LAPD. None of the jurors who did provide information  
2 regarding experiences with law enforcement remained as seated trial jurors. Mr. Frank further  
3 detailed the dismissals for cause and peremptory challenges and identified each such prospective  
4 jurors who was dismissed, all of whom had provided information concerning their past negative  
5 contacts with law enforcement agencies other than the Burbank police department. The relevancy  
6 of those propositions is to show the materiality of the negative contact answers given, to explain a  
7 likely motive for jurors no. 6 and 7 to withhold their criminal histories in response to the Court's  
8 questions, and to demonstrate prejudice to the City from the failures to disclose that information.  
9 Mr. Frank's citations to the record for the specific answers and dismissals of the prospective  
10 jurors avoids the hearsay and best evidence rule objections, and if needed Ev. Code § 1250  
11 provides an exception pertaining to the materiality, prejudice, and voir dire strategy issues raised.

12 5. Response to Objections to Paragraphs 8 and 9 of the Frank Declaration.

13 Plaintiff's objections no. 11-16 relate to Frank Declaration paragraph 8, and objections  
14 17-21 relate to Frank Declaration paragraph 9. The objections are the same series as with respect  
15 to the previous paragraphs. In Paragraph 8, Mr. Frank explains more of the reasons behind the  
16 voir dire questions and his intended use of them which are relevant to the prejudice issue for juror  
17 misconduct. Paragraph 9 relates to Mr. Frank's attempts to learn prospective jurors' initial  
18 impressions, and the foundation for his thinking on that subject. These propositions are largely  
19 from Mr. Frank's personal knowledge and experience, and are not offered for any hearsay  
20 purpose but if they were they would be subject to the state of mind exception of Ev. Code § 1250.  
21 Again they are relevant to the prejudice issue and to explain the voir dire strategy that was  
22 negatively impacted by jurors' failures to disclose their initial impression and biases. With  
23 respect to the proposition based on Mr. Frank's reading of the juror literature, he provided a copy  
24 of a recent article as an exhibit to his Declaration bearing on the issue of jurors changing their  
25 initial impressions. And with respect to the Court's pre-instruction and Ms. Savitt's admonitions  
26 to jurors, Mr. Frank provided citations to the record which address the hearsay and Best Evidence  
27 Rule objections to those propositions.

6. Response to Objections to Paragraph 10 of the Frank Declaration.

Plaintiff's objections no. 22-24 relate to Frank Declaration paragraph 10. The objections are the same series as with respect to the previous paragraphs. In Paragraph 10, Mr. Frank explains how he discussed the concepts embraced by CACI 2405 during his Opening Statement, and included citations to the record for each. This is not hearsay nor offered for hearsay purposes since the Opening Statement points are not offered for the truth but rather for the fact that the statements were made, demonstrating that the elements of CACI 2405 were placed in issue by the City from the earliest moments of the trial. Mr. Frank also noted that these concepts are ones he took from the *Cotran* decision and that he cited to *Cotran* in the City's settlement conference statement in November of 2011, one of the first pleadings the City filed or lodged after this Court took over the case from Judge Wiley. The latter reference is relevant to the fact that the *Cotran* defense was no last-minute concoction at trial but rather was placed in issue long before the trial. Mr. Frank has personal knowledge of each of those points.

7. Response to Objections to Paragraph 11 of the Frank Declaration.

Plaintiff's objections no. 25-27 and perhaps part of objection 28 relate to Frank Declaration paragraph 11. The objections are the same series as with respect to the previous paragraphs. In Paragraph 11, Mr. Frank details his discovery that CACI 2405 had been inadvertently or mistakenly omitted from the defense list of proposed jury instructions and the steps taken in response to that discovery, leading up to the filing of the proposed instruction and Mr. Frank's lodging of the *Cotran* and *Nazir* published decisions. These propositions are relevant to the instructional error issue, to address the objections as to timeliness of the submission of the proposed instruction, and to lay the foundation for making a record of the City's position. They are all taken from Mr. Frank's personal knowledge. Further, Mr. Frank attests to the exhibits he attached to his Declaration; as a custodian of his Firm's records he can validly attest to and lay foundation for producing his firm's business records and files. Those include the original and modified version of plaintiff's special instruction no. 18 which were also taken from his firm's files after receipt of the proposed Sp. Instruction 18 from Mr. Brizzolara in court and the revised version generated by Mr. Kay at counsel table after the discussion of that

1 instruction on the record. Ev. Code § 1271 is the business records exception to the hearsay rule.

2 8. Response to Objections to Paragraph 12 of the Frank Declaration.

3 Plaintiff's objections no. 29-31 appear to relate to Frank Declaration paragraph 12. The  
4 objections are the same series as with respect to the previous paragraphs. In Paragraph 12, Mr.  
5 Frank discusses his order of daily transcripts of the trial testimony and what was and was not  
6 requested by Plaintiff's counsel or ordered by the Court as to witness exclusion. These  
7 propositions are relevant to the instructional error issue on Plaintiff's special instruction no. 18,  
8 and to address the issue that there was no order prohibiting counsel from discussing another  
9 witness's testimony with a later trial witness. What the Court did not order and what plaintiff's  
10 counsel did not seek concerning witness restrictions is not hearsay, but rather is within the  
11 personal knowledge of the trial counsel who was present in court for the entire trial duration.

12 9. Response to Objections to Paragraph 13 of the Frank Declaration.

13 Plaintiff's objection no. 32 relates to Frank Declaration paragraph 13. The objections are  
14 the same series as with respect to the previous paragraphs, plus adding an argumentative  
15 objection. In Paragraph 12, Mr. Frank discusses Lt. Puglisi, what the Court did not order, and the  
16 fact of Mr. Frank's personal knowledge that Lt. Puglisi was never present in the courtroom while  
17 another witness was testifying in this trial. The propositions in this 6-line paragraph are relevant  
18 to the instructional error issue on Plaintiff's special instruction no. 18. There was no speculation  
19 about the fact that the Court did not order counsel to refrain from discussing another witnesses'  
20 testimony with later trial witnesses, nor are the stated propositions of fact argumentative. While  
21 the statement that Lt. Puglisi did not violate the witness exclusion order is a conclusion of mixed  
22 law and fact, there was no such objection tendered by Plaintiff and the remaining sentences in the  
23 paragraph lay the foundation for that conclusion.

24 10. Response to Objections to Paragraph 14 of the Frank Declaration.

25 Plaintiff's objection no. 33 relates to portions of Frank Declaration paragraph 14. The  
26 objections are the same series as with respect to the previous paragraphs, plus an argumentative  
27 objection. In Paragraph 13, Mr. Frank discusses Lt. Puglisi's cross-examination on the issue of  
28 what the witness had read to help him prepare to testify. That Paragraph also recites the fact that

1 Mr. Smith did not specifically ask Lt. Puglisi if he had reviewed depositions or other testimony of  
2 trial witnesses. It included Mr. Frank's opinion that Lt. Puglisi did not give the appearance of one  
3 who believed he had done any thing wrong. These points are all relevant to the instructional error  
4 issue and whether the witness in fact violated any court order, which is important to the City's  
5 objection to the inclusion of the reference to the witness exclusion order in Special Instruction  
6 No. 18. The City concedes that the hearsay objection to the portion of the first sentence of  
7 paragraph 14 stating what Lt. Puglisi did testify to is valid. The remainder of the paragraph is not  
8 objectionable hearsay, however. What a witness does not testify to, or what a witness is not  
9 asked, are not hearsay. Mr. Frank has foundation and personal knowledge for the lines 7-11 on  
10 page 7 that are the subject of plaintiff's objection no. 33, since he was present in court for the  
11 events so described.

12 11. Response to Objections to Paragraph 15 of the Frank Declaration.

13 Plaintiff's objection no. 34 relates to portions of Frank Declaration paragraph 15. The  
14 objections are the same series as with respect to the previous paragraphs, plus an argumentative  
15 objection. In Paragraph 15, Mr. Frank discusses the events of special instruction no. 18 and  
16 explains what Mr. Frank did and why he did so as to his objections and proposed amendments to  
17 that special instruction, based on his personal knowledge and reasoning, which is not offered for  
18 any hearsay purpose but if it were it would be subject to the state of mind exception of Ev. Code §  
19 1250. With respect to the actual argument and rulings of the Court, the Motion for New Trial  
20 contains the citations to the record and the City relies on them rather than the Frank Declaration  
21 for those facts.

22 12. Response to Objections to Paragraph 16 of the Frank Declaration.

23 Plaintiff's objections no. 35-39 relate to Frank Declaration paragraph 16. The objections  
24 are the same series as with respect to the previous paragraphs, plus argumentative objections. In  
25 Paragraph 16, Mr. Frank discusses some of the facts to which Sgt. Misquez and Lt. Puglisi  
26 testified about at trial and what they and Plaintiff discussed with Gardiner in sub-investigation #  
27 34. The City concedes that much of this paragraph is hearsay, but not the two sentences  
28 concerning the order of sequence of witnesses at trial.



1                   13.     Response to Objections to Paragraph 17 of the Frank Declaration.

2             Plaintiff's objection no. 40 relates to the first two sentences of Frank Declaration  
3 paragraph 17. The objections are the same series as with respect to the previous paragraphs, plus  
4 an argumentative objection. In Paragraph 17, Mr. Frank discusses the fact of the jury's 9-3  
5 verdict (a public record subject to the public records exception to the hearsay rule, Ev. Code §  
6 1280) and his subjective reaction of surprise to the verdict and why. The latter is relevant to the  
7 prejudice issue and to the alternative JNOV or Motion for New Trial on the grounds of  
8 insufficient evidence, and is not hearsay because it reflects Mr. Frank's then-existing state of  
9 minds and to explain his conduct and actions immediately following the dismissal of the jurors,  
10 per Ev. Code § 1250.

11                   14.     Response to Objections to Paragraph 18 of the Frank Declaration.

12             Plaintiff's objections no. 41-43 relate to most of Frank Declaration paragraph 18. The  
13 objections are the same series as with respect to the previous paragraphs, plus argumentative  
14 objections. In Paragraph 18, Mr. Frank discusses some of his immediate post-verdict discussion  
15 with trial jurors. While counsel's statement as to what jurors told him in the corridor are hearsay,  
16 those statements are subject to the spontaneous statement, contemporaneous statement, and state  
17 of mind exceptions contained in Ev. Code §§ 1240, 1241 and 1250. These propositions are  
18 relevant to the prejudice and instructional errors issues, and are from Mr. Frank's personal  
19 knowledge in the immediate post-verdict aftermath while the stress and excitement of the events  
20 were still fresh to the jurors.

21                   15.     Response to Objections to Paragraph 19 of the Frank Declaration.

22             Plaintiff's objections no. 44-46 relate to most of Frank Declaration paragraph 19. The City  
23 concedes that the statements of juror no. 2 that are discussed in Frank Declaration Paragraph 19  
24 are hearsay, but those statements are arguably subject to the spontaneous statement,  
25 contemporaneous statement, and state of mind exceptions contained in Ev. Code §§ 1240, 1241  
26 and 1250. Juror No. 2's indication that the motivating cause issue was discussed during  
27 deliberations and that he believed there was insufficient proof of misconduct to justify  
28 termination are relevant to the juror misconduct and instructional error issues, as well as prejudice

1 and the sufficiency of evidence issues. Mr. Frank's statement that Mr. Smith was standing close  
2 by when those juror statements were made is not hearsay nor objectionable. It is notable Mr.  
3 Smith did not even attempt to refute the statements that the various trial jurors told to Mr. Frank  
4 or to Deputy Chief Angel in his presence.

5 16. Response to Objections to Paragraph 20 of the Frank Declaration.

6 Plaintiff's objection no. 47 relates to Frank Declaration paragraph 20. The fact that jurors  
7 discussed the special instruction no. 18 and that the prepping of Lt. Puglisi was seen by some  
8 jurors as a violation of the witness exclusion order is relevant to the instructional error and  
9 prejudice issues. However, the City concedes that the statements of juror no. 9 that are discussed  
10 in Frank Declaration Paragraph 20 are hearsay and are not within any exception.

11 17. Response to Objections to Paragraph 21 of the Frank Declaration.

12 Plaintiff's objections no. 48-49 relate to most of Frank Declaration paragraph 21. In that  
13 paragraph, Mr. Frank details his consideration of the motion for new trial and its potential  
14 grounds, and the direction given to his firm's librarian Ms. Amberg to assist Mr. Frank in pursuit  
15 of his investigation into the jurors. There is no hearsay contained in paragraph 21 other than the  
16 statements Mr. Frank made to Ms. Amberg, which are subject to the state of mind and  
17 contemporaneous statement exceptions contained in Ev. Code §§ 1241 and 1250. The foundation  
18 for the propositions in paragraph 21 are Mr. Frank's personal knowledge, and the relevance is to  
19 lay the groundwork and foundation for the steps taken by Mr. Frank and Ms. Amberg that  
20 resulted in the discovery of jurors no. 6 and 7's criminal records.

21 18. Response to Objections to Paragraph 22 of the Frank Declaration.

22 Plaintiff's objections no. 50-51 relate to most of Frank Declaration paragraph 22.  
23 Paragraph 22 contains Mr. Frank's summary of the juror profession information he provided to  
24 Ms Amberg for her Internet research, his review of some of the web pages or sites Ms. Amberg's  
25 research revealed, and his identification of jurors no. 6 and 7 from websites or account postings  
26 that Ms. Amberg identified for him. The foundation for the profession information was the sworn  
27 answers of the jurors during voir dire, and the foundation for Mr. Frank's identification of juror  
28 Nos. 6 and 7 was his personal knowledge from having seen the two jurors in court every day for

1 over two weeks and hearing juror no. 6's voice in the immediate post-verdict hallway discussion  
2 just outside Department 50. Per Ev. Code §§ 1241 and 1250, Ms. Frank is offering some of the  
3 statements in paragraph 22 to explain what he and Ms. Amberg did and why they did it, and to  
4 prove or explain their acts and conduct. Mr. Frank's identification of the voice and image of juror  
5 No. 6 as the person depicted in the documentary film making company website and the image of  
6 juror No. 7 from a Twitter account for a person with the same name as Juror No. 6 and who like  
7 juror No. 6 described herself as a chef have obvious relevance to the juror misconduct issues and  
8 to the process of identifying the criminal records pertaining to those two jurors. The  
9 argumentative and speculation objections are unclear but lack merit as to any sentence or  
10 proposition in Paragraph 22. The City does not understand the Best Evidence Rule objection to  
11 paragraph 22, but assuming that it might refer to the video on the website or the photograph on  
12 the Twitter account, having the original video or photograph is not required for a witness  
13 identification.

14                   19.     Response to Objections to Paragraph 23 of the Frank Declaration.

15             Plaintiff's objections no. 52-54 relate to Frank Declaration paragraph 23. Paragraph 23  
16 contains Mr. Frank's recitation of the fact that the criminal records he reviewed, as supplied by  
17 the LASC website and the certified criminal records, pertained to the persons whose pictured or  
18 video likeness and voice he was able to identify as jurors No. 6 and 7. Mr. Frank also states in  
19 that paragraph that neither trial Jurors No. 6 nor 7 revealed their prior contacts with law  
20 enforcement nor their respective self-assessments as to whether their prior contact would lead  
21 them to favor or disfavor a particular side in the trial. The foundation for the statements are  
22 contained in the Amberg Declaration and in the criminal records themselves. Some of those  
23 statements are hearsay, i.e., stating the content of the public records themselves, but the City  
24 relies on the certified records attached as exhibits for the substance of the criminal case records.  
25 The City is relying on Mr. Frank for his identification of the individuals with the same names as  
26 jurors no. 6 and 7, and on Ms. Amberg for her matching of the dates of birth listed on the criminal  
27 Complaints with the information revealed on the account or websites as to persons Mr. Frank  
28 identified as the two trial jurors of focus. The City concedes that Mr. Frank's characterization of

1 juror no. 7's criminal proceedings as recent and the substance of her having a court date on the  
2 same March 5, 2012 date as her jury service in the instant trial are hearsay, but City contends that  
3 the public records exception applies.

4 20. Response to Objections to Paragraph 24 of the Frank Declaration.

5 Plaintiff's objections no. 55-57 relate to Frank Declaration paragraph 24. Paragraph 24  
6 contains Mr. Frank's summary of telephone conversations with several jurors after the trial, and a  
7 brief discussion of Mr. Frank's approach to the telephone interviews and his efforts to contact  
8 other trial jurors. The City concedes that much of this paragraph does contain hearsay, but some  
9 of it is offered to explain what Mr. Frank did and why he did it, and thus would be subject to the  
10 state of mind exception of Ev. Code § 1250. The foundation is Mr. Frank's personal knowledge  
11 and participation in the phone calls, and the relevance is show prejudice on the instructional  
12 issues and jury misconduct issues.

13 21. Response to Objections to Paragraph 25 of the Frank Declaration.

14 Plaintiff's objection no. 58 relates to the first two sentences of Frank Declaration  
15 paragraph 25. Paragraph 25 describes Mr. Frank's post-verdict call with the alternate juror, who  
16 indicated that he would have voted for the City had he been allowed to participate in deliberation,  
17 which is highly relevant to the prejudice issue since if either of jurors No. 6 or 7 had been  
18 excused, the alternate juror would have voted and the jury would have hung. The first sentence of  
19 Frank Declaration paragraph 25 is not hearsay but the City concedes the second sentence is.

20 22. Response to Objections to Paragraph 26 of the Frank Declaration.

21 Plaintiff's objections no. 59-61 relate to Frank Declaration paragraph 26. Paragraph 26  
22 contains 3 sentences, none of which contain hearsay and all of which are based on the personal  
23 knowledge of Mr. Frank. The first sentence is a statement that Mr. Frank did not know or have  
24 any reason to suspect that trial Jurors No. 6 and 7 had criminal records until after the verdict.  
25 This point is relevant to case law regarding juror misconduct cases. The second sentence  
26 provides the foundation for the prejudice to the City of the jurors' failure to disclose their  
27 criminal records, i.e., that they deprived the defense of the ability to ask them follow-up questions  
28 regarding those contacts, to exercise possible challenges for cause, or to exercise one of the

1 remaining peremptory challenges. These are neither argumentative nor hearsay statement, but  
2 rather a statement of the facts as to how the information would or could have been used during  
3 the trial. The third sentence is another straightforward fact within the personal knowledge of trial  
4 counsel, i.e., that the defense only exercised 2 peremptory challenges to the 12 seated jurors,  
5 meaning there were many remaining peremptory challenges the defense could have used.

6 23. Response to Objections to Paragraph 27 of the Frank Declaration.

7 Plaintiff's objections no. 62-67 relate to Frank Declaration paragraph 27. Paragraph 27  
8 contains Mr. Frank's opinion there was no factual basis for a reasonable juror to find that  
9 plaintiff's termination was motivated by any retaliatory animus, in part to explain why the verdict  
10 in favor of the plaintiff surprised him, and in part to lay the foundation for the moving papers'  
11 argument as to why there was an insufficiency of evidence on retaliatory animus. Mr. Frank  
12 qualifies as an expert and his opinion tends in reason to show that a new trial or JNOV should be  
13 granted on the grounds of insufficient evidence. Mr. Frank's summary of the testimony of certain  
14 witnesses is concededly hearsay.

15 24. Response to Objections to Paragraph 28 of the Frank Declaration.

16 Plaintiff's objections no. 68-69 relate to Frank Declaration paragraph 28. Paragraph 28  
17 contains Mr. Frank's summary of the economic damages figure awarded by the jury and the three  
18 scenarios to which plaintiff's economist Karen Smith testified. The relevance of this information  
19 was to demonstrate that the jury's damages award appears to eschew any so-called "demotion"  
20 damages because the jury was given the option of awarding for the loss of pay and benefits  
21 between Plaintiff being a Deputy Chief and his being a Captain, but they elected the smaller  
22 amount. This summary avoided attaching most of the economists' testimony, and was based on  
23 Mr. Frank's attendance at the trial rather than his reading of the transcript. The last sentence of  
24 this paragraph contains the substance of Mr. Frank's post-trial interview of two jurors on the  
25 "demotion" issue, which the City concedes is hearsay.

26 25. Response to Objections to Paragraph 29 of the Frank Declaration.

27 Plaintiff's objection no. 70 relates to Frank Declaration paragraph 29. Paragraph 29  
28 simply attaches pertinent pages for the reporter's transcript from James Gardiner's testimony and

1 lists the pages attached. Since Mr. Frank ordered the trial transcript, reviewed it post-trial,  
2 selected the pages to be included in the brief in support of the Motion for New Trial, and is a  
3 custodian of his firm's files for this action, he obviously has the foundation to select and attach  
4 pages for the official reporter's transcript. Plaintiff's shot gun repeated objections on grounds of  
5 argumentativeness, speculation, hearsay, relevance, assuming facts, Best Evidence Rule, etc.  
6 plainly lack merit.

7                   26.     Response to Objections to Paragraphs 30 and 31 of the Frank Declaration.

8             Plaintiff's objections no. 71-72 relate to Frank Declaration paragraphs 30 and 31, which  
9 simply attach pertinent pages for the reporter's transcript from Tim Stehr's and Janice Lowers'  
10 trial testimony respectively, and lists the pages attached. The City's comments for Paragraph 29  
11 apply equally to these meritless objections.

12                   27.     Response to Objections to Paragraph 32 of the Frank Declaration.

13             Plaintiff's objection no. 73 relates to Frank Declaration paragraph 32, which simply  
14 attaches pertinent pages for the reporter's transcript from Plaintiff Taylor's own trial testimony  
15 and lists the pages attached. The City's comments for Paragraph 29 apply equally to these  
16 meritless objections.

17                   28.     Response to Objections to Paragraphs 33-37 of the Frank Declaration.

18             Plaintiff's objections no. 74-78 relate to Frank Declaration paragraph 33-37, which simply  
19 attach pertinent pages for the reporter's transcript from the trial testimony of witnesses Puglisi,  
20 Misquez, Varner, Angel, and LaChasse, respectively, and lists the pages attached. The City's  
21 comments for Paragraph 29 apply equally to these meritless objections.

22  
23                   29.     Response to Objections to Paragraph 38 of the Frank Declaration.

24             Plaintiff's final objection to the Frank Declaration is an objection to Exhibit 3, an article  
25 from the March 2012 DRI publication entitled *For the Defense*. The article is not offered for the  
26 truth of the matter asserted, but rather to explain what Mr. Frank did and why he did it on  
27 requesting voir dire questions and his participation in voir dire during the trial. The foundation  
28 for the article is that Mr. Frank is a member of DRI and receives its monthly magazine, which

1 contained the article of interest which he read. It is essentially a scholarly article of the sort that  
2 experts rely upon, and Mr. Frank qualifies as a expert on trial advocacy.

3 **C. Response to the 17 Objections to Linda Miller Savitt Declaration**

4 Plaintiff objected to 17 different portions of the Declaration of Linda Miller Savitt, trial  
5 counsel for the City. There was no objection to the first two paragraphs of her Declaration, but  
6 virtually every other sentence drew multiple objections.

7 1. Response to Objections to all of Paragraph 3

8 Plaintiff's objections nos. 1-4 relate to the entirety paragraph 3 of the Declaration of Ms.  
9 Savitt on grounds including relevance, hearsay, lacks foundation, assumes facts not in evidence,  
10 argumentative, best evidence rule, vague and ambiguous, and compound<sup>3</sup> all without any  
11 specificity or explanation. Each objection lacks merit. In paragraph 3, Ms. Savitt explains that  
12 ferreting out prospective jurors' contacts with law enforcement was material to City in assessing  
13 bias on voir dire, and she explains her personal observations of what transpired during voir dire.  
14 Ms. Savitt is relating her personal knowledge and reasoning to explain what she did and observed,  
15 which is not offered for any hearsay purpose. The relevance is that the Court considered the use  
16 of force and law enforcement contact questions to be sufficiently germane and important in the  
17 case that it selected those question from the 20 or so topics the City requested as ones to actually  
18 inquire about. Ms. Savitt further gave the sequence of timing of the Court's inquiries of  
19 prospective jurors about these topics, i.e., prior to attorney *voir dire*, and then again when  
20 replacement prospective jurors were seated following excusals of several jurors for cause or upon  
21 exercises by both sides of peremptory challenges. These statements are also based on Ms.  
22 Savitt's personal knowledge from the trial and the conduct of the proceedings. Finally, Ms. Savitt  
23 states that neither of the two jurors who are the subject of the juror misconduct issues raised in the  
24 Motion for New Trial responded to the negative contact question, nor did either avail themselves

25  
26 <sup>3</sup> As with the Amberg and Frank objections, Plaintiff piles on extraneous objections as to the first  
27 paragraph in the Savitt Declaration such as "compound" and "vague and ambiguous," with no  
28 explanation as to what is vague or why a sentence in a Declaration (as opposed to a question of a  
witness) can be objectionably compound. City will not reiterate this point as to each of the  
objections to the Savitt Declaration since it would be the same response as set forth above.

1 of the private sidebar option. It is not hearsay to report that another person failed to speak. The  
2 fact that the two focused jurors failed to disclose anything in response to the law enforcement  
3 contact questions is plainly relevant to the juror misconduct issues raised by the Motion for New  
4 Trial, i.e., that two jurors who turned out to have criminal records failed to reveal them.

5                   2.     Response to Objections to all of Paragraph 4

6             Plaintiff's objections nos. 5-10 relate to the entirety of paragraph 4 of Ms. Savitt's  
7 Declaration on grounds that it is irrelevant, lacks foundation and assumes facts not in evidence,  
8 speculation, argumentative, hearsay, and best evidence rule. Again, these objections lack merit.  
9 In paragraph 4 of her declaration, Ms. Savitt explains her goals during voir dire. Further, she  
10 relates her personal experience and observations from this and past trials regarding the effect of  
11 juror concealment of information on voir dire, and her impression of judge's intentions when  
12 asking in voir dire whether prospective jurors can wait until they hear all of the evidence before  
13 making up their mind. These propositions are from Ms. Savitt's personal knowledge and  
14 experience, and are not offered for any hearsay purpose but if they were they would be subject to  
15 the state of mind exception of Ev. Code § 1250. Again they are relevant to the prejudice issue and  
16 to explain the voir dire strategy that was negatively impacted by jurors' failures to disclose their  
17 initial impression and biases. In addition, Ms. Savitt explains that she requested CACI 100 be  
18 read to the jury and it was, which is again a statement of what she did and observed, and is  
19 relevant to the prejudice issue and was not offered for any hearsay purpose. To the extent that the  
20 trial transcript is the best evidence of the Court reading CACI 100 to the jury, this objection is  
21 conceded.

22                   3.     Response to Objections to all of Paragraph 5

23             Plaintiff's objections nos. 11-14 relate to the entirety of paragraph 5 of Ms. Savitt's  
24 Declaration. The objections are the same series as with respect to the previous paragraphs. In  
25 paragraph 5, Ms. Savitt details when and how she and Mr. Frank discovered that CACI 2405 had  
26 been mistakenly omitted from the defense list of proposed jury instructions and how counsel  
27 attempted to rectify that error in a timely fashion. These proposition are relevant to the  
28 instructional error issue, to address the objections as to timeliness of the submission of the




1 proposed instruction, and to lay the foundation for making a record of the City's position. They  
2 are all taken from Ms. Savitt's personal knowledge, and are not offered for any hearsay purpose  
3 but if they were they would be subject to the state of mind exception of Ev. Code § 1250. Ms.  
4 Savitt also states that had the Court agreed to give CACI 2405, she would have used it in her  
5 closing arguments and she would have used the Elmo to show the instruction to the jury. This is  
6 relevant to the issue of prejudice to the City and in explaining why the elements of CACI 2405  
7 were not presented to the jury in closing arguments as she did for other instructions. These  
8 statements are also from Ms. Savitt's personal knowledge and fall under the state of mind  
9 exception of Ev. Code § 1250.

10 4. Response to Objections to all of Paragraph 6

11 Plaintiff's objections nos. 15-17 relate to the entirety of paragraph 6 of Ms. Savitt's  
12 declaration. The objections are the same series as with respect to the previous paragraphs.  
13 Paragraph 6 contains 3 sentences, none of which contain hearsay and all of which are based on  
14 the personal knowledge of Ms. Savitt. The first sentence is a statement that Ms. Savitt did not  
15 know or have any reason to suspect that trial Jurors No. 6 and 7 had criminal records until after  
16 the verdict. This point is relevant to case law regarding juror misconduct cases. The second  
17 sentence provides the foundation for the prejudice to the City of the jurors' failure to disclose  
18 their criminal records, i.e., that they deprived the defense of the ability to ask them follow-up  
19 questions regarding those contacts, to exercise possible challenges for cause, or to exercise one of  
20 the remaining peremptory challenges. These are neither argumentative nor hearsay statement, but  
21 rather a statement of the facts as to how the information would or could have been used during  
22 the trial. The third sentence is another straightforward fact within the personal knowledge of trial  
23 counsel, i.e., that the defense only exercised 2 peremptory challenges to the 12 seated jurors,  
24 meaning there were many remaining peremptory challenges the defense could have used.  
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BURKE, WILLIAMS & SORENSEN, LLP

By:   
Ronald F. Frank  
Attorneys for Defendant,  
City of Burbank

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**PROOF OF SERVICE BY OVERNIGHT DELIVERY**

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953. On May 30, 2012, I deposited with Overnite Express, a true and correct copy of the within documents:

**DEFENDANT CITY OF BURBANK'S RESPONSE TO PLAINTIFF'S  
OBJECTIONS TO EVIDENCE IN SUPPORT OF MOTION FOR NEW TRIAL  
OR ALTERNATIVE JNOV in a sealed envelope, addressed as follows:**

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Following ordinary business practices, the envelope was sealed and placed for collection by Overnite Express on this date, and would, in the ordinary course of business, be retrieved by Overnite Express for overnight delivery on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 30, 2012, at Los Angeles, California.

\_\_\_\_\_  
Theresa Nevarez